

CHIP

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February 23, 1996

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Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: CS Docket No. 95-184 Notice of Proposed Rulemaking

To Whom It May Concern:

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CHIP is a trade association of apartment building owners. We represent about 2,500 owners of multiple dwellings in New York City and would like to present comments on several issues raised in the above-referenced notice.

In particular, we would like to address the questions raised in paragraph 63 concerning access to customers' premises. We feel strongly that allowing existing telephone company easements to apply to video or other services from the same or different providers would be a violation of our Fifth Amendment rights. The U.S. Supreme Court in the Loretto case made clear, for example, that requiring property owners to allow cable television wiring on their property was a taking. Slipping video "under the door" by replacing existing telephone wiring with new broadband wiring is not acceptable under our understanding of easements for telephony. Nor would be the taking of additional space for amplifiers or junctions. Certainly the installation of multiple wiring systems by multiple providers would, if physically possible in the first place, be an even greater taking.

We also think the discussion of issues surrounding the possibility of a common demarcation point in paragraph 13 is crucial, particularly the issue "of who the 'customer' is --the landlord or the tenant..." We insist that the property owner *controls* the wiring on the customer side of the demarcation point, wherever that is and regardless of whether the landlord or tenant or service provider has installed it. Wiring by a tenant in a rental unit is subject to the approval of the property owner pursuant to lease terms. Even in the absence of a lease or specific clause, a tenant has a common law obligation to restore an apartment to the condition in which it was rented. Nor does the tenant have any right to his or her improvements left in the unit unless reserved in some agreement with the landlord. Similarly, any wiring on the customer side of the demarcation point by a service provider must be done only with the consent of the owner, by easement, or by taking.

In a more general sense, we would like to make the commission aware that preserving the rights of property owners to control access in no way presents a barrier to open and reasonable competition by telecommunications and video service providers. It is becoming

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common in new multi-family construction to provide a communications wiring infrastructure. Companies may bid to build this infrastructure and to connect to it. If anything, this creates opportunities for smaller, local equipment manufacturers and installers to compete with more bureaucratic, higher overhead, national operations or vertically integrated providers.

We also feel that whatever the technical merits, multiple sets of wiring to multiple demarcation points in a multiple dwelling will produce chaos both in appearance and service quality. Competition must be found in another way. As property owners, we have long objected to the roughshod installations of franchised cable television companies with loose wires hanging from buildings; fasteners breaking the waterproof seals on outside walls, roofs, and parapets; and unsightly wires crisscrossing decorative hall moldings or walls. Apart from the damage to our property, these installations are also marked by repeated and unnecessary service breakdowns that simply do not occur with properly laid wire. Giving telecommunications providers unfettered license to take our property will give them license to do the job badly.

More to the point, perhaps, builders and building codes can quickly adapt (in fact, are adapting) to the need for carefully laid out wiring and conduit: adequately sized, secure, and hidden. This is the appropriate direction for multiple dwelling service to go. You must allow owners to be compensated for the reinvestment to do the job right in existing buildings.

Finally, we would like to touch on the issue of the consumers' choice of providers. The property owner's concern is to have controlled and compensated access. To the extent that the technical capacity exists for multiple providers to use the same service delivery system simultaneously, there is less of a problem with tenant choice. To the extent that such technical capacity does not exist, however, we must insist that the rental tenant's choice is limited to what is available in the building -- the same way their choice of on premises laundry facilities, parking, or view is limited by what the building has to offer. Their option as rental tenants is to move to someplace they consider more desirable. There is no doubt that building owners will be competing for tenants with amenity packages that include telecommunications/video access.

Thank you for considering our comments.

Sincerely,

Dan Margulies
Executive Director